



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

**March 27, 1975**

**The Honorable Raymond W. Vowell  
Commissioner  
State Department of Public Welfare  
John H. Reagan Bldg.  
Austin, Texas 78701**

**Open Records Decision No. 73**

**Re; Department files on  
child abuse investigation.**

**Dear Commissioner Vowell:**

You ask whether Welfare Department protective services records pertaining to complaints of child neglect and abuse are subject to disclosure under the Open Records Act, article 6252-17a, V. T. C. S. You state that such records consist almost entirely of detailed information on the personalities and life styles of the persons investigated, their friends and their families, culminating in the case worker's recommendations for disposition of the child.

We said in Open Records Decision No. 49 (1974) that Texas has demonstrated a strong public policy favoring the detection, investigation and treatment of child abuse cases. There we decided that the identity of the complainant in a child abuse case is excepted from disclosure as information made confidential by judicial decisions recognizing the informer's privilege.

There is no express statutory provision making records of child abuse investigations confidential as such.

In Chapter 34 of the Family Code, dealing with child abuse and neglect, section 34.05 requires the Department of Public Welfare through its local units to make:

. . . a thorough investigation promptly after receiving either the oral or written report [of child abuse or neglect]. The primary purpose of the investigation shall be the protection of the child.

The required investigation includes determinations of the nature, extent, and cause of the abuse or neglect, the identity of the person responsible for the abuse or neglect, the condition of other children in the home, an evaluation of the parents, the adequacy of the home environment, the relationship of the child to the parents, and physical, psychological or psychiatric examinations of all children in the home. Entrance into the home and investigation of the family may be compelled by court order. Sec. 34.05, Family Code.

The action of the State in making such an investigation represents a significant intrusion into the constitutionally protected "private realm of family life which the state cannot enter" without substantial justification. Prince v. Massachusetts, 321 U.S. 158, 166 (1944). The Constitution protects the right "to marry, establish a home, and bring up children." Meyer v. Nebraska, 262 U.S. 390, 399 (1923), and "the liberty . . . to direct the upbringing and education of children," Pierce v. Society of Sisters, 268 U.S. 510, 534-535 (1925); and these are among "the basic civil rights of man." Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

Certainly the interest of the state in protecting the welfare of children is a substantial and compelling justification for the intrusion involved in an investigation of possible child abuse or neglect. However, when the state enters sensitive areas of liberty such as family privacy, it must use the least drastic means to achieve its purpose. Shelton v. Tucker, 364 U.S. 479, 488 (1960).

The relationship of required public disclosure to the interest of the child is tenuous at best, and in this case the State's interest in public disclosure is far from compelling. An interpretation of the Open Records Act which would require disclosure to any member of the public of a report concerning the most intimate details of a family's relationships would pose serious constitutional problems. We believe that the information requested is excepted from public disclosure by section 3(a)(1) as information deemed confidential by constitutional law, as it is within the realm of family privacy.

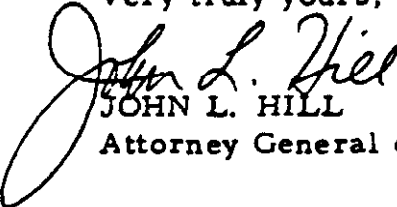
Further, while the primary purpose of the investigation is the protection of the child, a definite secondary purpose of the investigation is to determine whether criminal prosecution may be warranted. Subsection (e) of section 34.05 of the Family Code provides that the agency:

. . . shall make a complete written report of the investigation together with its recommendations to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency. (Emphasis added).

Were it not for the special circumstance that the victim is a child, the investigation of charges of criminal conduct such as assault would normally be handled by a regular law enforcement agency from the beginning. The interposition of the Department of Public Welfare into the investigative process in order to protect the child does not make it any less an investigation of criminal conduct. The Department's role is supplementary to that of the law enforcement agency, and the Department's investigation is conducted in part on behalf of the law enforcement agency that would otherwise be responsible. We believe that the statutory requirement that the report of the investigation be given to a law enforcement agency, in whose hands the type of information to which you refer would be excepted from disclosure under section 3(a)(8) of the Open Records Act, makes that exception applicable to the requested information.

The requested information is therefore excepted from disclosure by sections 3(a)(1) and 3(a)(8) of the Open Records Act.


Very truly yours,

  
JOHN L. HILL

Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee